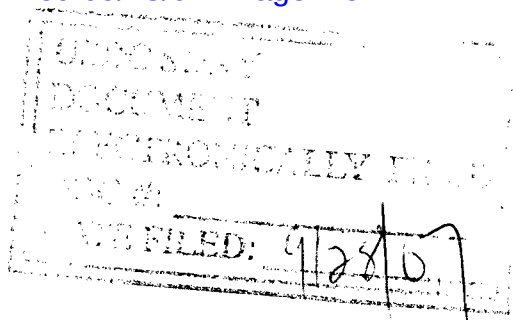


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
JERMAINE WILSON,

:

Plaintiff,

: REPORT AND RECOMMENDATION

-v.-

: 07 Civ. 3658 (JSR)(GWG)

NEW YORK CITY CORPORATION COUNSEL :
et al.,

Defendants.

:

-----X
GABRIEL W. GORENSTEIN, United States Magistrate Judge.

The complaint in this matter was filed on May 9, 2007. As of August 14, 2007, no return of service had been filed with the Court as to any of the defendants. Accordingly, the Court issued an Order on that date informing plaintiff that he was required either to serve the summons and complaint on or before September 13, 2007, or to seek an extension of this deadline by showing good cause for his failure to effectuate service. This Order specifically informed the plaintiff that his case could be dismissed if he failed to comply with these directives.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion, or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

The 120-day period permitted under Rule 4(m) has expired. To date, there has been no proof of service filed with respect to any of the defendants in this matter. Nor has there been an application for an extension of time that shows good cause for such failure. In addition, the Court's clerk has learned from the Marshal's Service that it has received no request from plaintiff to effectuate service.

The Court notes that a mailing to plaintiff of a copy of the Order dated August 14, 2007, at the address plaintiff provided on the complaint – at Rikers Island – was returned as

undeliverable.¹ The New York City Department of Corrections' website reflects that plaintiff is not currently in its custody. This should have no bearing on the dismissal, however, as it was plaintiff's responsibility to apprise the Court of his current address. See, e.g., Ortiz v. United States, 2002 WL 1492115, at *2 (S.D.N.Y. July 11, 2002) (dismissing case for failure to prosecute where "[p]laintiff has not even fulfilled his minimal obligation to keep the pro se office of this Court informed of his change of address").

Accordingly, this matter should be dismissed without prejudice pursuant to Rule 4(m).

**PROCEDURE FOR FILING OBJECTIONS TO THIS
REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have ten (10) days from service of this Report to file any objections. See also Fed. R. Civ. P. 6(a), (e). Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with copies sent to the Honorable Jed S. Rakoff, 500 Pearl Street, New York, New York 10007. Any request for an extension of time to file objections must be directed to Judge Rakoff. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985).

SO ORDERED.

Dated: September 28, 2007
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge

Copy mailed to:

Jermaine Wilson
ID # 2410512890
Otis Bantum Correctional Ctr
16-00 Hazen St.
E. Elmhurst, NY 11370

¹ This mailing was initially made with an incorrect inmate number (the one shown on the August 14, 2007 Order) and was returned. The mailing was made again, on August 28, 2007, with the correct inmate number. The mailing was returned once again.